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| 1 | | <u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u> | | | |
| 2 | <u>Witnesses:</u> | <u>Direct</u> | <u>Cross</u> | Re- <u>direct</u> | Re- <u>cross</u> By <u>Examiner</u> |
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| 4 | | | | | |
| 5 | | | | | |
| 6 | | None. | | | |
| 7 | | | | | |
| 8 | | <u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u> | | | |
| 9 | <u>Number</u> | <u>For Identification</u> | | | <u>In Evidence</u> |
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| 12 | | | | | |
| 13 | | None so marked. | | | |
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1 JUDGE KIRKLAND-MONTAGUE: By the power vested in
2 me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket No.
4 T-10-0157 for hearing.

5 This is in the matter of the Illinois
6 Commerce Commission, on its own motion, versus the
7 Keokuk Junction Railway Company regarding a
8 citation with respect to Keokuk Junction Railway
9 Company's failure to maintain the U.S. 67 highway
10 rail grade crossing surface in accordance with the
11 requirements of 92 Illinois Administrative Code
12 Part 1535.203.

13 May I have appearances, please. And why
14 don't we start here in Chicago.

15 MS. ANDERSON: Thank you, your Honor.

16 My name is Jennifer Anderson. I appear
17 on behalf of the Staff of the Illinois Commerce
18 Commission. My address is 160 North LaSalle
19 Street, Chicago, Illinois 60601, and my phone
20 number is (312) 814-1934.

21 JUDGE KIRKLAND-MONTAGUE: Okay. In the white
22 shirt in Springfield?

1 MR. DANIEL LaKEMPER: Daniel LaKemper (phonetic)
2 for Keokuk Junction Railway Company, 1318 South
3 Johannson Road, Peoria, Illinois 61607. (309)
4 697-1400.

5 JUDGE KIRKLAND-MONTAGUE: Okay. And to your --

6 MR. SHANE CULLEN: Shane Cullen, 1318 South
7 Johannson Road, Peoria, Illinois 61607. (309)
8 697-1400.

9 JUDGE KIRKLAND-MONTAGUE: Thank you.

10 Next to you?

11 MR. RANDY HOPPER: Randy Hopper, District 4,
12 Illinois Department of Transportation, 411 Main
13 Street, Peoria, Illinois 606- -- I don't remember
14 our zip -- 02. Sorry about that.

15 JUDGE KIRKLAND-MONTAGUE: Okay.

16 In the center?

17 MR. JAMES MORRIS: James Morris with the
18 Illinois Department of Transportation, Bureau of
19 Design and Environment. Address, 2300 South
20 Dirksen Parkway, Springfield, Illinois 62764.
21 Phone, (217) 782-2369.

22 JUDGE KIRKLAND-MONTAGUE: Mr. Saladino?

1 MR. SALADINO: Yes, your Honor.

2 John Saladino, S-a-l-a-d-i-n-o,
3 representing the Staff of the railroad safety
4 section of the Commission, 527 East Capitol Avenue,
5 Springfield, Illinois 62701, and the phone number
6 is (217) 785-8423.

7 JUDGE KIRKLAND-MONTAGUE: Okay.

8 MS. SUSAN ECKHOFF: Sue Eckhoff with the
9 District 4, Illinois Department of Transportation,
10 401 Main Street, Peoria, Illinois 61602. Phone
11 number is (309) 671-3372.

12 JUDGE KIRKLAND-MONTAGUE: Thank you.

13 Well, who would like to start?

14 Mr. LaKemper, can you give us an update
15 on where the railroad is?

16 MR. DANIEL LaKEMPER: Yes.

17 Since our last status conference, the
18 contractor that we had did obtain a letter from the
19 manufacturer indicating they were authorized to
20 install the Star Track panels, and that letter has
21 been forwarded to IDOT, to your office, correct?

22 Okay. And we finally, after

1 considerable prodding from Jennifer and as well as
2 others got all the answers to our technical
3 questions.

4 We did get a draft contract from Jim
5 Morris, which I was able yesterday to give him some
6 initial feedback on. And, frankly, at this point,
7 I think we're very close to finalizing that
8 agreement and getting the replacement setup to be
9 done.

10 JUDGE KIRKLAND-MONTAGUE: Okay.

11 When you say you think you're close, how
12 close? I mean, in terms of day time?

13 MR. DANIEL LaKEMPER: Jim, how many --

14 MR. JAMES MORRIS: Yeah, I was able to look at
15 your comments this morning, and I don't have any
16 problem with them. So we can reissue a revised
17 agreement and send it to you.

18 So, you know, I'm sure, you know, some
19 day this week, we can send it out.

20 MR. DANIEL LaKEMPER: How long does it take it
21 to get executed on your end?

22 MR. JAMES MORRIS: The minimum, a week.

1 Usually, two weeks.

2 MR. DANIEL LaKEMPER: Okay. So I would think,
3 you know, in about three weeks, we would have
4 something signed and the contractor would be
5 shortly thereafter given the go-ahead to order the
6 materials and schedule the job.

7 I think, from a practical standpoint --
8 and, Shane, you know, maybe you want to mention
9 that the weather issue is a concern for
10 installation, but...

11 MR. SHANE CULLEN: Yeah.

12 The concern we got is timing of the
13 installation. Right now, it's recommended that
14 we're mid May to early part of June because of
15 temperature from the Star Track II manufacturer.
16 By same token, if it happens to warm up prior to
17 that, then we'll just be reluctant -- or relying on
18 the material delivery.

19 MR. DANIEL LaKEMPER: Yeah, I don't know. Do
20 you know what the lag time is on ordering those
21 materials?

22 MR. SHANE CULLEN: I would just generally guess

1 four weeks. Maybe six weeks.

2 MR. LaKEMPER: I mean, from our standpoint, you
3 know, sometime by mid summer, it should be --
4 should be on line to be done.

5 JUDGE KIRKLAND-MONTAGUE: You mean in the
6 process or --

7 MR. LaKEMPER: I mean installed.

8 JUDGE KIRKLAND-MONTAGUE: Installed? Okay.

9 So you think you can get going by no
10 later -- I mean, probably going -- I mean, I don't
11 know, but I'm thinking June. By June, it should be
12 sufficiently warm enough prior to -- maybe even in
13 May -- to get things started, because I know we
14 were -- we were concerned about the IDOT funds
15 being allocated by a certain point in time. Is
16 that correct?

17 Can anyone from IDOT confirm that?

18 MR. JAMES MORRIS: Yes. As long as we have the
19 agreement executed, and if they could -- okay.

20 Say we get the agreement out this week.
21 They'll turn it around in another week and we'll
22 get it executed. I can put a rush on it. So

1 that'll be another week. So say three weeks.

2 So sometime in April, it'll be executed
3 and that will lock up funds. So that aspect of it
4 will be fine.

5 JUDGE KIRKLAND-MONTAGUE: Okay.

6 And then does the agreement include a
7 time frame for starting -- I know there's a
8 variable of the weather, but would the -- does the
9 agreement include a time frame for --

10 MR. SHANE CULLEN: No.

11 JUDGE KIRKLAND-MONTAGUE: No?

12 MR. DANIEL LaKEMPER: I believe -- correct me if
13 I'm wrong, Jim, but I think the agreement says it
14 has to be within a year.

15 MR. JAMES MORRIS: Within a year.

16 MR. DANIEL LaKEMPER: But from a practical
17 standpoint, it has to be done this summer because
18 of the weather factor.

19 JUDGE KIRKLAND-MONTAGUE: True. True.

20 MR. JAMES MORRIS: Yeah. Once we have a fully
21 executed agreement, we send an authorization letter
22 to the railroad saying you're authorized to

1 assemble material/personnel to complete the job.

2 And it usually doesn't take that long, once they
3 get on site to build it.

4 So it'll -- I'm sure it'll be, you know,
5 constructed before the end of the fiscal year.

6 JUDGE KIRKLAND-MONTAGUE: Hm-hmm.

7 MR. JAMES MORRIS: But as long as we have the
8 agreement executed, the funds are locked up.

9 JUDGE KIRKLAND-MONTAGUE: Right.

10 MR. JAMES MORRIS: You know, when they complete
11 the job is a separate issue from the locking up of
12 the funds.

13 JUDGE KIRKLAND-MONTAGUE: I see.

14 Mr. Saladino, what do you think about
15 that?

16 I know you don't like the idea of this
17 being open-ended -- or let me not put words in your
18 mouth, but...

19 MR. SALADINO: That's correct, your Honor.

20 We would still press and ask that the
21 Commission issue an order with a completion date to
22 have this done by -- and we can agree to a date

1 either in the end of June or the end of July,
2 something of that nature.

3 JUDGE KIRKLAND-MONTAGUE: Okay.

4 MR. SALADINO: Just to make sure -- I think
5 we're okay now with IDOT's funds are going to be
6 obligated before the end of the fiscal year.
7 That's not a concern.

8 The concern is that the crossing still
9 deteriorates. There's still a lot of maintenance
10 that has to be done.

11 JUDGE KIRKLAND-MONTAGUE: Hm-hmm.

12 MR. SALADINO: And we would just like to see
13 this reconstructed as soon as possible.

14 JUDGE KIRKLAND-MONTAGUE: Hm-hmm.

15 MR. LaKEMPER: I guess, your Honor, we don't
16 feel an order of that nature is appropriate in this
17 proceeding since we're dealing with maintenance and
18 what we're actually doing here is a complete
19 replacement.

20 I guess I'm also troubled by the fact
21 that IDOT's not a party to this case, which I think
22 it probably should be.

1 But, I mean, I guess my suggestion would
2 be to schedule another status conference. And if
3 the agreement is executed and the work is
4 completed, then I would think that the case should
5 be dismissed without prejudice.

6 JUDGE KIRKLAND-MONTAGUE: Yeah.

7 Well, ultimately, we could get to that
8 point -- we would get to that point with -- I mean,
9 let's -- I'm just throwing this out there.

10 Say the Commission issues an order with
11 the an ordered completion date and you meet that.
12 Obviously, there's -- you know, you anticipate and
13 expect that to happen. And when that's done, we
14 can then issue another order dismissing the
15 citation altogether.

16 So it's just a matter of how we want to
17 proceed. It sounds -- you know, I'm pleased by how
18 things seem to be progressing very well with the
19 railroad and IDOT.

20 I mean -- and Mr. LaKemper has a good
21 point with IDOT is not a party. So there is -- you
22 know, I mean they're variable as well.

1 However, I don't know. I think the
2 status meetings are working well. I mean,
3 Mr. Saladino, things are progressing. Wouldn't you
4 agree?

5 MR. SALADINO: I agree, your Honor.

6 JUDGE KIRKLAND-MONTAGUE: Yeah.

7 I mean, I think we can monitor things
8 and I feel confident that things will continue to
9 progress.

10 We always have the option of issuing an
11 order. I mean, that's always looming out there.
12 So, hopefully, that's a big enough incentive for
13 people to keep things going.

14 You know, I'm inclined to -- let's set
15 another hearing -- status for three weeks to check
16 on the status of the agreement. I know that those
17 are just issues that are tangential in some
18 respect, but that's a sign of things moving
19 forward.

20 Once that agreement is in place, and
21 assuming the weather will break and things will
22 move forward -- I mean, I think we can move --

1 continue to move forward without an order at this
2 point.

3 So why don't we take a look at the
4 calendar and see where that takes us. We can go
5 off record.

6 (Discussion off the record.)

7 JUDGE KIRKLAND-MONTAGUE: This matter will be
8 continued to Thursday, April 14th, 2:00 p.m. in
9 Chicago and Springfield via video conference and we
10 will reconvene at that time.

11 Thank you.

12 MR. LaKEMPER: Thank you, your Honor.

13 MR. SALADINO: Thank you your Honor.

14 (Whereupon, said hearing was
15 continued to April 14, 2011
16 at 2:00 p.m.)

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